EXHIBIT 2
DATE 02/06/07
HB 493

Testimony-HB432
February 6, 2007

Mr. Chairman, members of the committee, my name is Al Skogen and I am testifying here today on my own behalf.

I am very passionate about the opportunity for biotechnology in crops to increase economic opportunity for producers, feed more hungry people, and enhance our environment. This liability legislation is, in effect, a moratorium on that opportunity.

I am currently Chairman of Growers for Biotechnology, a group of farmers from Montana, North Dakota, and Minnesota whose purpose is to promote research, development, and acceptance of biotechnology in crops through science based factual information and education.

I also chair the National Assn. of Wheat Growers (NAWG), Biotech subcommittee and a member of the joint NAWG/US Wheat Assoc. biotech committee. Just last week, we passed resolutions in that committee to reach out to growers in Canada and Australia to jointly develop timelines for commercialization of biotech wheat. We also agreed to encourage all biotech researchers to step up their efforts in trait development to increase wheat competitiveness and profitability.

This bill would, in effect, stop our efforts to accomplish this and limit opportunity for Montana producers.

I farm in east central North Dakota with my son where we raise Corn, Soybeans, and Wheat. My county, Barnes County, historically was one of the largest producing counties of spring wheat and malting barley in the US.
In 2006 we planted well over twice as many acres to soybeans than wheat and eight times as many acres of corn as we did barley. Canola acreage has also increased in North Dakota 500% since biotech canola was introduced.

Barnes County	acres 2000	acres 2006	price change same period
Wheat	257,000	146,000	+28%
Soybeans	134,000	357,000	+26%
Corn	30,000	88,000	+13%
Barley	72,000	12,000	-6%

Why? Because these biotech crops are more profitable.
In the case of corn, better yield technology had something to do with it, but in the case of soybeans, the yield curve is similar to wheat.

The primary reason for these acreage shifts is the additional profitability brought about through the use of biotech traits in these crops. In the 80,s and early 90,s We tried both corn and Soybeans but soon encountered some serious weed and insect problems and

conventional control methods were too costly and only marginally effective. Under those conditions, corn and beans just were not profitable.

Then, when we were introduced to biotech corn and soybeans, with RR and corn bore resistant genes things changed. These biotech traits reduced our cost of production dramatically, and made them very profitable. Conventional Wheat and Barley are just not competitive.

And now, because we have the ability to grow these crops successfully a whole new world has opened up for us. 12 miles to my west sits one of the largest malt plants in the US, unfortunately, importing much of its barley, meanwhile, under construction next to it is a new $300ml ethanol plant. Two more plants are being planned within 80 miles of my farm and 2 biodiesel plants are being built in north central North Dakota. I doubt very much if this opportunity would be there without biotechnology. Current biotech traits and the expectation of new traits in the pipeline, has allowed me and my neighbors to increase corn, soybean, and canola production.
This bill could in effect limit Montana's renewable energy opportunity.

The economics of growing Wheat just are not very good, in North Dakota, or here in Montana. The difference is that Montana is much more dependent on Wheat for its economic well being.

There is however great opportunity waiting for Wheat. A long list of potential GM traits include herbicide, drought, salt, and cold tolerance, disease and insect resistance, enhanced nutrient utilization, end use quality enhancements, and human health benefits. All of which have hade some level of research already done and are moving forward in other crops. Also, probably the greatest opportunity for Montana, biotech yield and processing enhancement for use in production of cellulosic ethanol form wheat and switchgrass.
The greatest hurdle to stepped up biotech research is the lack of confidence that research and development has in the ability to commercialize a trait, This bill would in effect send the message that wheat is not worth the risk. Nor is Montana, for that matter.

The research opportunity for this state in biotechnology is huge, however, other states are already well along the way to developing strategic public/private research relationships. Just one example of this type of public/private collaboration is taking place At NDSU right now. A multimillion dollar project is in place to enhance Canola oil production for use in the biodiesel industry. Much of the money and genome technology is being provided to NDSU research through a public/ private agreement. We just could not get these private companies to invest in our state until we sent a clear message from our legislature that North Dakota was ready to embrace the technology and move forward.

This bill sends a devastating message to that opportunity.
I urge you, not only to defeat this bill, but develop a positive message from Montana, that you are a willing partner in technology development in agriculture.
(Attached is more background information about liability, and existing biotech research.)

HB 432 (Biotech Crop Liability) HB 493 (Required GMO Wheat Seed Labeling):

Boon for Lawyers; Poison Pills for Research, Agriculture, and Economic Development in Montana

Biotechnology-derived seeds and crops do not fit the well-established criteria for strict liability treatment – they are legally neither hazardous nor defective per se. There are no confirmed cases of harm due to growing or consuming crops improved through biotechnology. Biotech seeds and crops have been grown successfully for over 10 years, and in 2005 the 8.5 million farmers around the world planting biotech crops marked a significant milestone with the 1 billionth cumulative acre planted.

Biotech-derived crops are already highly regulated by the federal government (USDA, FDA, EPA) which reviews their safety prior to sale or use. A technology provider who fails to undergo this highly comprehensive review process is subject to product seizure, fines and other civil and criminal penalties. That failure would also give rise to civil liability under existing law (negligence per se).

Farmers and consumers are already fully protected under existing laws and civil legal frameworks, including product liability law. Current USDA, EPA, and FDA regulations give the federal government broad enforcement authority to act (such as enforcing recalls or seizures) if a crop improved through biotechnology were ever to pose a threat to the environment, or a risk to health or safety. Moreover, existing product liability standards, which are based on product manufacturing or design defect, apply and are appropriate and adequate to address any potential allegations of harm related to agricultural crops.

The presence of transgenic crops in organic production does not constitute a violation of USDA organic production standards, so long as the organic producer follows the producer's own approved organic system plan. Adventitious presence does not affect the status of the certified operation (or certification) and does not necessarily result in loss of organic status for the organic product, provided it was produced in adherence with all of the organic requirements under 7 CFR 205. To wit: "Organic standards are process based. Certifying agents attest to the ability of organic operations to follow a set of production standards and practices that meet the requirements of the act and the regulations. This regulation prohibits the use of excluded methods in organic operations. The presence of a detectable residue of a product of excluded methods alone does not necessarily constitute a violation of this regulation. As long as an organic operation has not used excluded methods and takes responsible steps to avoid contact with the products of excluded methods as detailed in their approved organic system plan, the unintentional presence of the products of excluded methods should not affect the status of an organic product or operation" *(USDA-National Organic Program, 2000, p. 80556, www.ams.usda.gov/NOP/NOP/standards.html).*

The conventional legal rule is that a person who signs a contract promising to satisfy product quality specifications bears the costs and the responsibilities to fulfill those voluntarily accepted specifications. Buyers and sellers of goods have always contracted for standards and specifications for those goods. The person who seeks a premium

by promising product quality specifications must earn that premium. An organic farmer, or any farmer, who signs a contract guaranteeing something, such as 0% GMO, assumes the responsibility for ensuring that level, just as that farmer bears the responsibility for meeting any other contractual obligation, such as produce quality, size or color. The presence of products and/or processes in the marketplace used by some growers but not others (ie biotech seeds, pesticides, synthetic fertilizers) does not change the basic contract rights or obligations of willing buyers and sellers of goods.

This trade-distorting liability measure could set a disastrous and far reaching precedent to Montana's agricultural business climate and future economic development. Private and public seed developers (including Montana State University) would be hindered by the inclusion of speculative risks in a liability and redress regime, and less likely to conduct research and business related to agricultural biotechnology. Montana's farmers could in effect be embargoed from the opportunity of producing more profitable crops. This could also deal a serious blow to developing biofuels in the state, which involve biotechnology-derived crops and processing (biotechnology plays a key part in enzymatic processes).

Public varieties and public seed developers may be adversely affected as well. This would clearly be a research set back for Montana State University. Public universities and research institutions such as CIMMYT (International Maize and Wheat Improvement Center, which is researching biotech wheat drought tolerance) may be deterred from releasing new or advanced biotech-derived technologies in Montana. Further, private companies would be less included to cooperatively research and develop biotech-derived materials and processes. This would be an awkward and ironic twist of fate for a proud research institution that includes the following in its mission statement: *"To provide an environment that promotes the exploration, discovery, and dissemination of new knowledge."*

HB 493 is a back-door approach to the same liability scheme put forth in HB 432. It is ill-advised for the same reasons, and for others. Wheat already lags behind other crops in terms of commercial seed technology, and this measure would throw up yet another roadblock. No such requirement is imposed on other crops. Further, seed developers already implement standard stewardship requirements and best management practices for the production of biotech crops, ie isolation distances between fields and refuge areas for non Bt crops. Requiring more stringent label requirements would be logistically confusing and costly to implement. A patchwork of inconsistent state seed labeling laws would also be confusing for farmers and a quagmire for seed sellers, retailers, distributors, conditioners, and regulators in the state.

Prepared by: **GROWERS FOR BIOTECHNOLOGY**

Sources, resources for an in-depth detailed review of the flaws and implications of liability:

Legal Liability Issues in Agricultural Biotechnology, Drew L. Kershen, University of Oklahoma Law Center, http://crop.scijournals.org/cgi/content/full/44/2/456#SEC3

Agricultural Biotechnology: Legal Liability from Comparative and International Law Perspectives, Kershen & Stuart J. Smyth, Univ. of Saskatchewan, http://law.bepress.com/expresso/eps/1279/

Sources and resources for more on biotech crops:

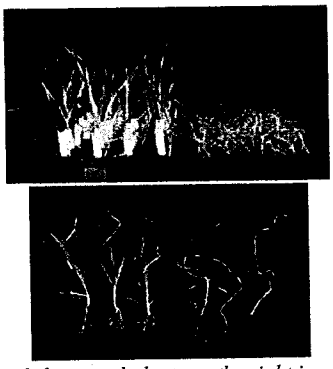
www.bio.org/foodag www.growersforbiotechnology.org

Benefits of Biotech Crops – The Proof is in the Pictures

Drought Tolorant GM Wheat Research at CIMMYT

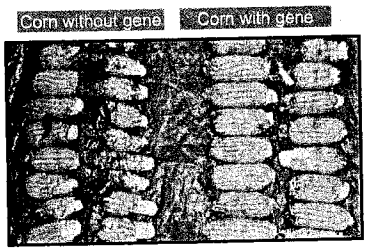
International Maize and Wheat Improvement Center

- Promising levels of drought tolerance in wheat
- Field testing underway in Mexico
- Gene construct from Japan!

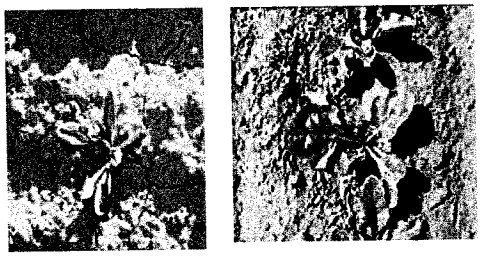


Drought tolerant plants at left, control plants on the right in both of the above photographs, after 10 days without water.

Drought Tolerance Comparisons



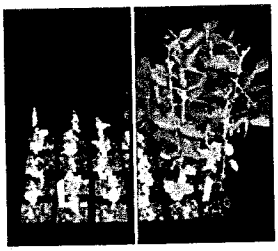
No Herbicide Injury!



Conventional sugar beets June 5, 2006, after 3 treatments with traditional herbicide program

Roundup Ready® sugar beets June 5, 2006, after 1 treatment with Roundup® agricultural herbicide

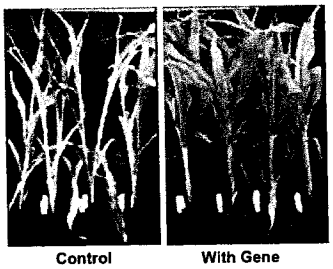
Soybean Drought Tolerance Research



Control With Gene

New biotech traits in the development pipeline

Key Biotech R&D Focus: Drought Tolerance



Control With Gene

Corn Drought Tolerance Research

Farmer Benefit: Using Nitrogen Efficiently

Monsanto Research

Nitrogen Tolerant Genes

Genomics

Biotechnology

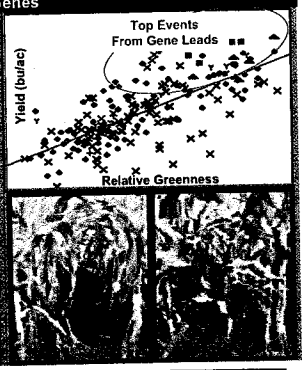
Nitrogen is one of the most important nutrients for crop growth, second only to water

Product Concept

- Crops with more efficient N utilization

Grower Benefits

- Improved crop performance
- Enhanced nitrogen uptake
- Less yield variability
- Greater output per unit input



Discovery | Phase 1 Proof of Concept | Phase 2 Early Development | Phase 3 Adv. Development | Phase 4 Pre-Launch | Launch

Growers for Biotechnology

www.growersforbiotechnology.org